



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for damages and loss pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each testified that they were in receipt of all materials. Based on the testimonies I find that the tenant was served with the landlord's 2 Month Notice and evidence in accordance with section 88 of the *Act* and the landlord was served with the tenant's notice of application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

This periodic tenancy began in December, 2013. The current monthly rent is \$1,749.90 payable on the first of each month. There have been 5 previous hearings regarding this tenancy all of which have been found in the tenant's favour.

The landlord issued the 2 Month Notice which indicates the reason for the notice as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord submits that the close family member who will be occupying the rental unit are the landlord's daughter and her family. The landlord's son-in-law TD testified that they have a young child and believe that living in the rental unit will allow the landlord to provide child care for them. He said that while other Notices to End Tenancy have been issued by the landlord throughout the tenancy the present 2 Month Notice is issued with good faith. He stated that the landlord provided an affidavit stating their intentions.

The tenant testified that the landlord has issued multiple Notices to End Tenancy and the present 2 Month Notice is identical to one which was issued in September 2017 which was cancelled and found to be of no effect at a previous hearing.

The tenant said that the landlord has continued to issue frivolous Notices and harass the tenant and her family. The tenant said that having to dispute each baseless Notice, file an application, prepare for and attend a hearing has been stressful and time consuming. The tenant seeks that the landlord comply with the Act and for a monetary award in the amount of \$3,499.80, double the monthly rent for the loss of quiet enjoyment she has suffered.

Analysis

Where a tenant applies to dispute a 2 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 2 Month Notice is based. The landlord claims that her daughter and family will occupy the rental unit and provided an affidavit and letter from the family members as evidence of their intention.

The tenant disputes the intention of the landlord and points to the fact that the landlord has issued multiple Notices to End Tenancy in the past. I find that the tenant is making a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has raised the good faith intention of the landlord which I find has significant basis. In the present situation where the landlord has issued multiple Notices to End Tenancy it is reasonable to question the intention of the landlord. The landlord has issued an earlier 2 Month Notice claiming that their son was the family member who would occupy the rental unit. That Notice was cancelled at a previous hearing. After the failure of that notice the landlord promptly issued another 2 Month Notice changing the family member who would occupy the rental suite. The landlord did not provide convincing explanation of how these successive Notices to End the Tenancy are unrelated.

Based on the evidence, I find that the landlord has not shown a good faith intention in issuing the 2 Month Notice. I find it more likely that the landlord continues to issue baseless and frivolous Notices as they are unable to accept that they do not have a right to the rental suite. Accordingly, I allow the tenant's application and cancel the 2 Month Notice. This tenancy continues until ended in accordance with the Act.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I accept the tenant's evidence that the continued issuance of the Notices has had a significant impact on her ability to reside in the rental unit. The tenant was awarded a monetary award in the amount of \$500.00 in an earlier hearing in December, 2017 for loss of quiet enjoyment up to that time.

I find that the tenant has shown the impact the landlord's behavior has had on the tenant's right to quiet enjoyment. The landlord has been found at previous hearings to have issued Notices to End Tenancy in bad faith and without merit. The tenant was issued a monetary award in the previous hearing and I therefore limit my findings to the period after the last decision in December, 2017. A conclusive decision was made on the 2 Month Notice issued in September, 2017 but the landlord simply chose to reissue

the same Notice in January, 2018. I accept the tenant's evidence that she has had to dispute the Notice, serve evidence and arrange her schedule to attend another hearing on a matter that had already been heard. I find that the landlord's behavior has breached the tenant's right to quiet enjoyment. I find that an appropriate amount of damages for loss of quiet enjoyment for the period from December, 2017 to the hearing date to be \$200.00.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated January 30, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$300.00 from future rent payable to the landlord for this tenancy at the rental unit in full satisfaction of the monetary award made at this hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 10, 2018

Residential Tenancy Branch